

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

DATTCO, INC.

Employer

and

LOCAL 371, UNITED FOOD AND COMMERCIAL
WORKERS UNION, AFL-CIO, CLC

Petitioner

Case No. 34-RC-1950

DECISION AND DIRECTION OF ELECTION

Local 371, International Food and Commercial Workers Union, AFL-CIO, CLC, filed a petition in this case under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of approximately 80 bus drivers employed by Dattco, Inc. at its Westport, Connecticut facility. The sole issue in this case is the Employer's contention that a unit limited to the drivers at the Westport facility is not an appropriate unit for the purposes of collective bargaining. In this regard, the Employer maintains it has rebutted the Board's presumption favoring single facility bargaining units. For the reasons noted below, I find no merit to the Employer's contention, and I have directed an election in the unit sought by the Petitioner.

1. Preliminary Findings. Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction;

the labor organization involved claims to represent certain employees of the Employer;¹ and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

2. The Appropriate Unit. As noted above, I have rejected the Employer's contention that it has rebutted the presumption that a single facility unit limited to the drivers at the Westport facility is an appropriate unit for the purposes of collective bargaining. To the contrary, I find that a unit of drivers limited to the Westport facility is an appropriate unit. In reaching this conclusion I note that the Board has previously held that the Employer has failed to rebut the presumption favoring a single facility unit at another Connecticut location, and that the only new evidence proffered by the Employer in this case regarding its overall operations and the Westport location remains insufficient to rebut the single facility presumption. More specifically:

Background. The Employer, a Connecticut corporation with its headquarters located in New Britain, Connecticut, is a bus company engaged in providing inter and intra state charter services and local school bus transportation within Connecticut. It presently employs approximately 700 drivers at Connecticut facilities located in Avon, Bridgeport, Cheshire, Hartford, Middletown, New Britain, New Haven, North Branford, Plainville and Westport.

Previous cases. In Case No. 34-RC-1209, pursuant to a petition filed by the Petitioner, a hearing was held regarding the appropriateness of a unit of drivers at the Employer's North Branford facility. That petition was withdrawn prior to the issuance of any decision. Subsequently, in Case No. 34-RC-1290, pursuant to a petition filed by United Food & Commercial Workers, Local 919, AFL-CIO, I issued a Decision and Order finding that a unit limited to drivers at the North Branford facility was inappropriate. Thereafter, in Case No. 34-RC-1431, pursuant to a petition filed by the

¹ Teamsters Local 559 sought to intervene in this matter only if a "statewide" unit was found appropriate. In light of my finding that a unit limited to the Westport facility is appropriate, the request to intervene is denied.

Petitioner, I issued a Decision and Order finding that a unit limited to the Employer's drivers at a facility in Clinton,² was also inappropriate. However, in a Decision reported at 324 NLRB 323 (1997), the Board found that the single facility presumption had not been rebutted and that a unit limited to drivers at the Clinton facility was appropriate. There are no prior Board cases nor any history of collective bargaining with respect to the employees at the Westport facility.

Employer's overall operations. The salient facts pertaining to the Employer's overall operations are not in dispute and are accurately reported in the decisions that issued in Cases Nos. 34-RC-1290 and 34-RC-1431.³ Briefly summarized, those facts reveal that although all drivers are assigned to a particular facility and report directly to the terminal manager and dispatcher at their facility, the Employer centrally coordinates all routing, hiring, discharging, training, safety, charter service, and maintenance functions. In addition, all drivers, regardless of their location, are subject to uniform rules, regulations, instructions, policies, and fringe benefits, and all payroll, sales and accounting functions are performed at the New Britain headquarters.

As a result of the centralized coordination of all school bus and charter routes, the Employer regularly shifts drivers and buses between facilities on a daily basis in order to adjust for surpluses and deficits in personnel and equipment. To accomplish this task, each day at 10:00 a.m. a teleconference call is held with at least one management representative participating from each facility, along with the Employer's Northern and Southern District Managers who are located at the New Britain headquarters.⁴

² The Employer no longer operates the Clinton facility .

³ The Employer's request that I take administrative notice of those decisions, as well as the administrative law judge's decision in Case Nos. 34-CA-8596 and 8658, is hereby granted.

⁴ This teleconference now utilizes a computer program which recently replaced the system, described in the previous decisions, whereby the dispatcher at each facility would telephonically transmit their needs and available resources to the New Britain headquarters.

The Westport facility. The Westport facility consists of a yard for parking approximately 50 to 60 buses, a three-bay garage where an undisclosed number of mechanics perform maintenance on the buses, and a building containing offices, a drivers room, and bathroom facilities. Also considered part of the Westport facility is a parking lot in Bridgeport, known as the State Street Extension, where approximately 23 buses are parked each day. An unspecified number of drivers report directly to the State Street Extension, where they pick up their buses, commence their daily runs, and return their buses at the end of their workday. The closest school bus terminal to Westport is located approximately 30 miles to the east in New Haven.⁵ The next closest school bus terminals are in Middletown and Cheshire, approximately 40 to 50 miles from Westport.

Jack Hughes is the terminal manager and Nancy Shinn is the dispatcher at the Westport facility. Hughes reports directly to Southern District Manager Teddi Barra at the New Britain headquarters. Shinn reports directly to Hughes, and the 80 drivers at Westport report to Shinn. Also employed at Westport is a Safety Supervisor and individual trainers who assist and train the drivers on-site. Hughes is primarily responsible for the overall operation of the Westport facility. This includes interviewing all job applicants, establishing all bus routes, issuing discipline short of suspension or discharge, and granting or denying employee requests for time off. Shinn is primarily responsible for assigning drivers to their routes and insuring that all routes are covered each day. Drivers report any problems during the course of the day by radio directly to Shinn. Her duties also include the weekly processing of the payroll. This involves collecting a time sheet from each driver, verifying that the driver worked the hours on the timesheet, forwarding the information to the New Britain headquarters, and then distributing the paychecks received from New Britain to the drivers. Shinn is also involved in interviewing job applicants, granting or denying time off requests, and disciplining employees. In addition, prior to the start of the new school year, Shinn

⁵ Although there is another terminal located approximately 10 miles from Westport on Radell St. in Bridgeport, that terminal does not perform any school bus services and is used exclusively for “activity transport” vehicles.

contacts all drivers to determine whether they will be returning, and then utilizes a bidding system for the assignment of all bus routes.

With regard to the transfer of employees between facilities, there is no evidence that any driver has been permanently transferred into or out of Westport. With regard to the temporary daily transfer of employees between Westport and other facilities, the Westport facility has historically been understaffed, particularly at the beginning of the school year. As a result, more drivers are temporarily transferred into Westport than are transferred out.

With regard to the temporary transfer of Westport drivers to other facilities, the record reveals that from July 21 through July 27, 2001, 5 out of 39 Westport drivers⁶ worked a total of 36 hours for another facility; from July 28 through August 3, 4 out of 36 Westport drivers worked a total of 77 hours for another facility; from August 4 through August 10, 5 out of 29 Westport drivers worked a total of 64 hours for another facility; and from January 1 through April 1, 2002, only 3 out of approximately 80 Westport drivers worked a total of 138 hours for another facility. The majority of these hours consisted of voluntary charter runs. There is no evidence that any of these Westport drivers had any work-related contacts with any of the drivers at the facilities for which they were driving.

With regard to drivers from other facilities working in Westport, the record reveals that: in September 2001, 8 drivers worked some portion of a shift on 12 different week days; in October 2001, 8 drivers worked some portion of a shift on 19 different week days; in November 2001, 13 drivers worked some portion of a shift on 18 different week days; in December 2001, 10 drivers worked some portion of a shift on 15 different week days; and from January 1 through April 1, 2002, 10 drivers worked a total of 1712.5 hours for the Westport facility. There is no evidence that any of these non-Westport drivers had any work-related contacts with any Westport drivers while they were driving for the Westport facility.

⁶ The total driver complement is greatly reduced because school is not in session during July and August.

As noted above, all Westport drivers are subject to the same rules, regulations, instructions, policies, and fringe benefits as the drivers at all other facilities. However, pursuant to its contract with the Town of Westport, the Employer pays its drivers assigned to the Westport facility approximately one dollar per hour more than its drivers assigned to other facilities.

Conclusion. As noted above, on facts virtually identical to those described above, the Board in *Dattco, Inc.*, 324 NLRB 323 (1997), held that the presumption favoring a single facility unit had not been overcome and that a unit limited to drivers at one of the Employer's terminals was appropriate for the purposes of collective bargaining. See also *New Britain Transportation Co.*, 330 NLRB 397 (1999); *D & L Transportation*, 324 NLRB 160 (1997). The additional evidence proffered by the Employer in this case is insufficient to alter the Board's previous decision. In this regard, the Employer's newly installed teleconferencing capabilities, while streamlining its ability to coordinate the daily bus runs at all of its facilities, did not alter the manner in which it transferred employees and equipment among facilities. Moreover, the additional evidence of temporary interchange is of little evidentiary weight, as it lacks any context, such as the total number of routes and charters involving temporary interchange, and there is no evidence that temporarily transferred drivers have any work related contacts with drivers from other facilities.⁷

Accordingly, based upon the above and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time drivers employed by the Employer at its Westport, Connecticut facility; but excluding all other employees, and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

⁷ *R & D Trucking*, 327 NLRB 531 (1999), cited by the Employer in its post-hearing brief, is clearly inapposite, as the facts therein show that the two facilities in dispute shared common immediate supervision and substantial and regular interchange, including the permanent transfer of employees.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Local 371, United Food and Commercial Workers Union, AFL-CIO, CLC.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before April 30, 2002. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 7, 2002.

Dated at Hartford, Connecticut this 23rd day of April, 2002.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

440-1720-0133